



# Australian Citizens Party

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## MEDIA RELEASE

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### **‘Senator Bail-In’ lies to block explicit deposit protection**

The Senator who gave Australia “bail-in” is now leading the desperate effort in the Morrison government to block the bill that would absolutely ensure deposits can’t be bailed in.

Liberal Senator Jane Hume is the Senator for bankers in Parliament, but deserves the title Senator Bail-In: she chaired the rigged inquiry in 2017-18 that rubber-stamped the bail-in law before sneaking it through Parliament with only eight Senators present on the St Valentine’s Day Massacre of savings in February 2018.

All along Senator Bail-In loudly and falsely denied that the 2018 law, the [\*Financial Sector Legislation Amendment \(Crisis Resolution Powers and Other Measures\) Act 2018\*](#), was a bail-in law. In a 1 March 2018 letter to a constituent she insisted: “I can assure you that this bill does not constitute what some are referring to as ‘bail-in’ legislation.”

Yet even her own, legally-qualified colleague Senator Amanda Stoker, a top barrister who has been a prosecutor as well as a judge’s associate in both the Queensland Supreme Court and High Court of Australia, contradicted Senator Bail-In on this. From her own examination of the law, Senator Stoker acknowledged to the same constituent in a 5 November 2018 letter that “*The legislation facilitates bail-in as a type of resolution power which is available for dealing with financial institution distress.*” (Emphasis added.)

There was never any doubt that the 2018 law was a bail-in law, and that its bail-in provisions applied to so-called hybrid securities, a.k.a. “bail-in bonds”; the question was always that, given its very broad language, could its bail-in powers extend to bank deposits, as the global bail-in policy stipulates, and as happens in all of the jurisdictions closest to Australia? The government says no, but the law is not as explicit as the government’s public statements.

The current Senate inquiry into Senator Malcolm Roberts’ [\*Banking Amendment \(Deposits\) Bill 2020\*](#) has proved, by definition, that the law is unclear. Public submissions from hundreds of people, including from legal and banking experts, said the law is unclear and should be clarified. One of these, former Australian Banking Association Policy Director and John Howard advisor Nick Hossack agreed the law should be clarified, but said it should be made explicit that deposits *can* be bailed in! On the other hand, Treasury and the Australian Prudential Regulation Authority claimed the law is clear, but the very fact they take a different position to others proves it is not.

So Senator Bail-In has now weighed in. Jane Hume is now the Assistant Minister for Superannuation, Financial Services, and Financial Technology, and a former banker with NAB, Rothschild Australia and Deutsche Bank. For some reason the Liberal Member for North Sydney, Trent Zimmerman, chose to forward to her a constituent’s letter about Senator Roberts’ bail-in amendment bill. This is not Senator Bail-In’s area of portfolio responsibility—it is Treasurer Josh Frydenberg’s—but of course she is the most associated with the bail-in law.

In a 5 August reply to Trent Zimmerman, Senator Bail-In wrote: “I can confirm the government *does not consider* the provisions in the bill necessary. This is because *there is already legislative certainty* that deposits cannot be subject to any form of conversion, write-off, or bail-in.” (Emphasis added.)

Asserting in a letter that there is “legislative certainty” does not mean there is legislative certainty. The very broad clause in the law that says conversion and write-off (bail-in) provisions relate to “any other instrument” is not *certain*—it is the definition of *uncertain*. Senator Roberts’ amendment, however, that would add to “any other instrument” the words “(not including a deposit account)” *is certain*. It puts the issue beyond all doubt—*deposits will not be able to be bailed in*—without changing anything else in the law. Why would the government not want this level of certainty?

#### **Same old lies**

Senator Bail-In’s two predicates to support her statement have both been shown to be irrelevant and false. She claimed deposits are protected by the \$250,000 Financial Claims Scheme deposit guarantee, but the FCS can only be activated after a bank fails and creditors are dividing the assets, whereas the bail-in policy has been devised to stop a bank from failing.

(Also, by definition, claiming the FCS will protect deposits is an admission that deposits over \$250,000

can be bailed in. While this would affect fewer people, there are plenty of people who would prefer to keep their money in the bank for safekeeping rather than gambling it on the stock market or other investments—even a bail-in of deposits over \$250,000 would be devastating to those people and to confidence in the bank. The government does not concede that any level of deposits can be bailed in; nevertheless, this is the implication of their repeated claim that deposits are protected by the FCS.)

Senator Bail-In also claimed that the *Banking Act 1959* explicitly protects depositor claims. Like Treasury and APRA, however, she omitted that depositor protection in the *Banking Act 1959* is qualified by financial stability, and financial stability is the global excuse for bail-in! The logic of bail-in for financial stability is depositors must lose some of their money to stop their bank from failing or else they will lose more money and their bank could set off a domino collapse of banks that costs everybody their money. The organisation dictating bail-in worldwide, including for deposits, is the Financial Stability Board. Senator Bail-In knows this better than anyone, because when she chaired the original 2017-18 inquiry into the 2018 bail-in law, she wrote in the final report that the law “draws on” the Financial Stability Board’s “criteria” for propping up failing banks.

Senator Bail-In is not telling the truth. For some reason, she is now leading the government’s attempt to block the bill that will put the issue beyond all doubt, while still claiming that deposits won’t be bailed in. The government’s position was already unacceptable; Senator’s Bail-In’s role is more so, as she could have allowed this to be clarified when the law passed originally in 2018.

Don’t accept their lies when the solution is so obvious—call all MPs and Senators to demand they pass Malcolm Roberts’ bill, and call the Senators on the Committee to demand they hold public hearings.

### **Call and email the Committee and Senators!**

The bottom line is the [Banking Amendment \(Deposits\) Bill 2020](#) will put the issue beyond all doubt. If it is passed, *there can be no bail-in of deposits!* Concerned Australians should flood politicians with phone calls and emails demanding they pass Senator Malcolm Roberts’ bill. Make these points to the politicians:

1. There is confusion over bail-in, which the bill will clarify;
2. APRA is saying it won’t bail in deposits because its “paramount objective is to protect depositors”, but it is deliberately not saying that under the law that objective is balanced against “financial system stability”, which is the reason used worldwide to bail in deposits;
3. Treasury’s submission didn’t mention that Australia is part of the FSB, which says bail-in should include deposits, and lied that the *Banking Act* already contains “explicit” provisions that “expressly” protect deposits from bail-in, when it doesn’t;
4. The entire purpose of Senator Roberts’ bill is to insert into the *Banking Act* an “explicit” provision that “expressly” protects deposits from bail-in—why is the government trying to stop it?
5. Call the members of the committee to demand they take advantage of the cancellation of the next sitting of Parliament to extend the inquiry to hold public hearings at which experts on all sides can testify.

[Click here for the contact details of your local MP and state’s Senators.](#)

Here are the contact details for the members of the committee:

**Chair: Senator Slade Brockman (Lib)**

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**Deputy chair: Senator Alex Gallacher (ALP)**

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**Senator Andrew Bragg (Lib)**

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**Senator Jenny McAllister (ALP)**

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**Senator Susan McDonald (LNP)**

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**Senator Rex Patrick (Ind)**

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[Click here to sign the petition: Hands off our bank deposits—stop ‘bail-in’!](#)

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